IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8421 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARATBHAI MADHAVLAL KHALASI

Versus

DISTRICT MAGISTRATE ANAND

Appearance:

MR VIJAY H PATEL for the Petitioner.

Mr.M.K.Patel, Assistant GOVERNMENT PLEADER,

for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/02/2003

ORAL JUDGEMENT

The petitioner has challenged his detention order dated 1.7.2002, by which he is detained as a "Bootlegger", under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA",

for short). Along with the detention order, the petitioner is served with the grounds of detention. In the grounds of detention, it is mentioned that the petitioner is carrying on illegal activity and it is found that he is dealing in transporting illicit liquor. There is a reference about three cases in the detention order. Considering the material on record, the detaining authority passed the detention order. The said order is challenged by filing this petition.

At the time of hearing of this petition, Mr.Patel for the petitioner submitted that the authority recorded the statement of witnesses on 19th June, 2002 and 20th June, 2002, which was verified by the authority on 30.6.2002. This fact, as such, is not in dispute and on the very next day, the detention order is passed.

Mr.Patel, learned Advocate for the petitioner, has placed reliance upon the decision of this Court in Ranubhai Bhikhabhai Bharwad v. State of Gujarat & Ors., XLI(3) GLR 2696. This Court observed in paragraph 9 as under :-

> " ... ...
>
> The statements of the three witnesses in the instant case which were recorded before the Police Inspector on 17th August 1999, 21st August 1999 and 25th August 1999 with regard to the incidents dated 10th July 1999, 13thJune, 1999 and 26th June, 1999 were the material along with the proposal which is said to have been made on 27th August 1999 and it is clear from the record that it was on 29th August 1999 that the detaining authority has recorded its verification of all these three statements. There is nothing on record to show that the detaining authority had considered the proposal dated 27th August 1999 at any time prior to 29th August 1999 and on 29th August, 1999, all that has been done is that the concerned witnesses have stated before the detaining authority that the statements as had been made on the respective dates were correct and immediately thereafter on the following day, i.e. on 30th August 1999 the detention order has been passed.
>
> ... ..."

Considering the facts of this case, it is clear that on the very next day, the detaining authority has passed the order of detention. In view of the judgment of our High Court, it can be presumed that the authority has not properly applied its mind while passing the detention order. In that view of the matter, the order is required to be quashed set aside.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. Rule is made absolute.

19th February, 2003 (P.B. Majmudar, J.)

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(apj)